

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

JOINT COMMENTS IN RESPONSE TO PETITION FOR WAIVER

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I. Introduction and Summary

Atlantic Tele-Network, Inc.,¹ Smith Bagley, Inc., and PR Wireless, Inc. d/b/a Open Mobile (collectively, the “Parties”), pursuant to Section 1.3 of the Commission’s Rules, 47 U.S.C. § 1.3, hereby file these Joint Comments in response to the Petition for Waiver and Clarification of the United States Telecom Association, *et. al.* (“Petitioners”) filed March 9, 2012 (“Petition” or “Waiver Petition”).²

In their Waiver Request, Petitioners request that the Commission postpone the effective date for the establishment of the new interim flat-rate Lifeline reimbursement amount, the dates for elimination of the Link Up discounts on non-Tribal lands, and the changes to the Tribal Link Up discount to October 1, 2012. Petitioners correctly note that “this new structure ... represents a dramatic change that will require extensive work to implement.”³

The Parties fully support the waiver request, *provided that the waiver is applicable to all Lifeline service providers and not just those providing postpaid Lifeline service.* The very same concerns that warrant grant of the waiver apply with equal force to all Lifeline service providers, whether prepaid or postpaid, and whether wireless or wireline. Further, different effective dates for different classes of Lifeline service providers would violate the core universal service principle of competitive neutrality, and would result in unnecessary and unwarranted consumer confusion, extra work for the states, and the need for certain carriers to simultaneously operate under both the old rules and the new rules at the same time. If the waiver request is not granted to all Lifeline service providers, including those providing prepaid service, then the Parties

¹ Atlantic Tele-Network, Inc. is participating in these Joint Comments on behalf of itself and several of its subsidiaries, including Allied Wireless Communications Corp., Commnet Wireless, LLC, Choice Communications, Inc., and National Mobile Communications, Inc. d/b/a Sovernet Communications.

² Public Notice, DA 12-387, rel. March 9, 2012.

³ Petition at 4.

would not support the Petitioners' waiver request. The FCC must treat all Lifeline providers – prepaid and postpaid, wireline and wireless – in a competitively neutral fashion.

II. Grant of the Waiver is Warranted

For the reasons set forth in the Waiver Petition, the Commission should promptly grant a waiver to postpone the effective date for the new interim flat-rate Lifeline reimbursement amount, the dates for elimination of the Link Up discounts on non-Tribal lands and the changes to the Tribal Link Up discount to October 1, 2012. As the Petitioners note, a waiver is required because Lifeline providers “must modify their billing systems, update manual procedures, and complete employee training in order to implement the new requirements ...,”⁴ and the short period of time (less than 60 days) to accomplish these tasks is wholly insufficient. The Parties agree with the Petitioners that it will take more than 120 days to implement the changes.⁵

Postponing the effective date to October 1, 2012 makes perfect sense for several additional reasons. As the rules now stand, reimbursement rates for Lifeline will change effective with the April 2012 payment. To reflect these reduced reimbursement rates, carriers may need to adjust their end-user rates and will need to adjust their application and marketing materials. The Commission's new rules require carriers to update their application and certification procedures by June 1, and to update their marketing materials by October 1. The Commission correctly recognized that updating these materials will take a substantial amount of time. In particular, carriers that operate in many states – and must have specific application and marketing materials for each of those states to reflect, among other things, state specific rules – face an enormous task that cannot reasonably be accomplished by April 1, 2012. And yet, the April 1, 2012 date for modifying the reimbursement rates effectively requires carriers to modify

⁴ Petition at 2.

⁵ *Id.* at 6 – 7.

their application and marketing materials by April 1, not June 1 or October 1. An April 1, 2012 deadline for modifying all of these materials imposes an unreasonable burden upon all Lifeline providers.

III. There is No Logical Reason to Treat Postpaid Lifeline Service Differently than Prepaid Lifeline Service

Whether they provide prepaid or postpaid service, carriers face an enormous burden in having to change their billing systems, update their application and marketing forms, train employees, and take the other steps necessary to implement the Commission's new rules by April 1. Petitioners inexplicably seek a waiver only for "postpaid ETCs". There is no logical reason to treat providers of postpaid service differently than providers of prepaid service and Petitioners do not suggest that there is.⁶ In fact, it would be arbitrary and capricious to do so.

It would also be bad public policy to treat prepaid Lifeline service differently from postpaid Lifeline service. Such disparate rules would put carriers providing prepaid service at an enormous and distinct competitive disadvantage because they would receive less support for the same Lifeline services offered by carriers providing postpaid service during the period from April 1 – October 1. Furthermore, non-uniform deadlines would create enormous confusion among consumers. States and the FCC would have to explain on their web sites how (and why) one set of rates (and rules) apply to postpaid service while another set of rates (and rules) apply to prepaid service. Carriers that offer both postpaid and prepaid Lifeline services would have to produce two sets of application and marketing materials, and maintain their old billing system

⁶ In its *Lifeline Reform Order*, the FCC refused to draw a distinction between prepaid and postpaid wireless providers with regard to the compliance rules. "Additionally, we do not believe it is necessary to adopt a rule, as some suggest, that prepaid wireless providers explain how their Lifeline service differs from other Lifeline services. There is no benefit to imposing this burden on only one segment of the Lifeline service provider community, particularly considering the disclosures we require" *Lifeline Reform Order* at ¶ 277.

while implementing and using a new billing system.⁷ These carriers would have to train their employees as to which application form to use, and which billing system to enter the customer. Clearly, this would be a grossly unfair burden on these carriers.

Petitioners point out that in some states “postpaid ETCs” are subject to tariffing requirements and notice requirements that might delay the ability of these carriers to comply with the April 1, 2012 deadline.⁸ More accurately, some states impose tariffing and notice requirements – not on “postpaid ETCs” – but on incumbent wireline local exchange carriers. However, many state commissions impose advisory or informational tariff obligations on wireless ETCs (both prepaid and postpaid) as well, commonly as a condition to grant of ETC designation. As a result, prepaid and postpaid wireless Lifeline providers face similar state tariffing requirements to wireline Lifeline providers.

IV. Conclusion


As explained above, ETCs will be faced with the same burdens whether they provide postpaid Lifeline service, prepaid Lifeline service, or both. The core universal service principle of competitive neutrality mandates that ETCs not be treated differently solely because they use a different technological platform or competitive business model. Therefore, the Parties fully support the Petitioners’ waiver request, *provided that the waiver is applicable to all Lifeline providers, offering prepaid Lifeline service, postpaid Lifeline service, or both.* However, if the waiver request is not granted to all Lifeline service providers, including those providing prepaid

⁷ At least one of the Parties offers both postpaid and prepaid Lifeline services.

⁸ Petition at 5 - 6.

service, then the Parties would not support the Petitioners' waiver request. The FCC must treat all Lifeline providers – prepaid and postpaid, wireline and wireless – in a competitively neutral fashion.

Respectfully submitted,



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